



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 04-089

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

Section 428.203 (8g), Stats., as created by 2003 Wisconsin Act 257, provides in part that a lender may not finance, directly or indirectly, through a covered loan any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. However, s. DFI-Bkg 45.01 [46.01] defines the term “points and fees” in part to include the premium of any single premium credit life, credit disability, credit unemployment, or any other life or health insurance that is financed directly or indirectly into the loan. The rule seems to imply that a single premium for these insurance purposes may be financed by the covered loan while the statute appears to specifically state that this practice is prohibited. If the rule provision is retained, the agency should explain how it differs from the statutory prohibition. For example, perhaps a note could explain that the rule provision does not authorize the financing of single premiums in a covered loan; instead the rule provision considers these single premiums solely for the purpose of determining whether a sufficient amount of points and fees are imposed in order to make the transaction a covered loan. Also, if the provision is retained, should it also make reference to credit accident insurance in order to parallel statutory language?

4. Adequacy of References to Related Statutes, Rules and Forms

In s. DFI-Bkg 45.01 (4) (a), it might be more accurate to replace “...required to be disclosed...” with “...defined...” Although 12 CFR 226.32 defines “points and fees,” it seems that that section does not specifically refer to how or whether point and fees be disclosed.

Rather, s. 226.32 uses “points and fees” in the context of defining which loans are covered by that regulation.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1, “DFI-Bkg 45.01 Definitions.” should be “DFI-Bkg 46.01 Definitions.”

b. In s. DFI-Bkg 45.01 (3), it might be clearer if “...proper and prudent under...” were changed to “...proper and prudent for the customer under....”

c. In s. DFI-Bkg 46.02 (1), “...may be determined...” should be “...shall be determined....”

d. In s. DFI-Bkg 46.02 (2), all of the paragraphs should end with periods, and the “and” at the end of par. (b) should be deleted. In addition, it would be helpful if the Note specified where one could find the Fannie Mae and Freddie Mac forms.

e. In s. DFI-Bkg 46.03 (2), “...disclosure shall...” should be “disclosure form shall....”